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Office - Supreme Court, U.S.
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AUG
ALEXANDER L. STEVAS,

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STATE BOARD OF EQUALIZATION,
Petitioner,

v.

TRAILER TRAIN COMPANY AND RAILBOX COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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QUESTIONS PRESENTED

1. Did the Ninth Circuit err in holding that in levying a tax on respondent's rail transportation property, at a rate which greatly exceeds the rate at which the majority of other commercial and industrial property in the State of California is taxed, Petitioner violated Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976?[1]

2. Does the Ninth Circuit opinion, which concerns a comparison between the tax rate applied to rail transportation property and the tax rates applied to commercial and industrial property on the secured and unsecured local tax rolls, conflict

[1] Section 306 of The Railroad Revitalization and Regulatory Reform Act of 1976 is codified at 49 U.S.C. § 11503. Section 306 is reproduced in full as Appendix A.

with the Fourth Circuit Opinion in *Clinchfield Railroad Co.* v. *Lynch*, 700 F.2d 126 (4th Cir. 1983) which concerns a comparison between the assessment of rail transportation property and the differential assessment of locally assessed commercial and industrial real and personal property?

3. Is the Ninth Circuit's opinion that injunctive relief may, in the court's discretion, be granted without a showing of the traditional requirements for injunctive relief where a federal statute authorizes injunctive relief to prevent violation of the statute, consistent with the Supreme Court's opinion in *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305 (1983)?

STATEMENT OF THE CASE

Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act") prohibits the assessment, levy or collection of discriminatory state taxes on rail transportation property as an unreasonable burden on interstate commerce. Respondents in this case sought and obtained pursuant to Section 306(1)(c) of the 4-R Act a preliminary injunction against Petitioners enjoining the collection of 1978-79 taxes which were levied by Petitioner at a discriminatory tax rate. Section 306(1)(c) prohibits the levy or collection of taxes on rail transportation property at a rate which exceeds the tax rate generally applicable to other commercial and industrial property in the same taxing jurisdiction.

In California commercial and industrial property is taxed on both the secured and the unsecured tax rolls. For reasons which will be explained more fully below, commercial and industrial property on the 1978-79 unsecured roll was (like Respondent's railroad cars) taxed at a rate which was more than double the tax rate applied to commercial and industrial property on the secured tax roll. Petitioners contended below, that to determine whether the tax on Respondent's property was discriminatory, the court should compare the tax levied on Respondents property with the equally discriminatory tax levied on the unsecured roll. The district court rejected this obvious attempt to avoid the prohibitions of the federal statute. Because there was no tax rate applicable to commercial and industrial property *per se*, the court enjoined collection of any taxes on Respondent's property at a rate which exceeded the tax rate generally applicable to all other taxable property in the state.

On appeal, the Ninth Circuit affirmed in part, but disagreed in part. The Ninth Circuit reasoned that under Section 306(1)(a) the tax rate "generally applicable to commercial and industrial property" is the tax rate applied to the "majority" of commercial and industrial property and remanded the case for a determination whether the majority of commercial and industrial property is on the secured or the unsecured tax roll. Petitioner, evidently conceding that the majority of commercial and industrial property is on the secured tax roll, seeks to have this Court review the Ninth Circuit's decision. Petitioner contends that there is a "conflict" between the Ninth Circuit's opinion in this case and the Fourth Circuit's opinion in *Clinchfield Railroad Co.* v. *Lynch*, 700 F.2d 126 (4th Cir. 1983). The facts and the issues addressed in these cases, however, are so unrelated that it is readily apparent that no such conflict exists.

Petitioner State Board of Equalization ("State Board") assesses and levies taxes on Respondent's railroad cars pursuant to the California Private Railroad Car Tax Law ("PRCTL").[2] All other property taxes in the State of California are levied by local taxing authorities pursuant to general property tax law.[3] The PRCTL provides that Petitioner shall annually levy a tax on private railroad cars at the average general tax rate levied on other property by local taxing authorities for the prior year.[4]

In the 1978-79 tax year, Proposition 13 (now California Constitution Article XIIIA) limited the tax rate applicable to real property. Because California Constitution Article XIII, § 2 requires that personal property not be taxed at a rate higher than the tax on real property, the State Board initially determined that for the 1978-79 tax year, both real and personal property (including private railroad cars) should be taxed at the limited Proposition 13 rate. Private railroad cars, therefore, were initially taxed at the estimated average general rate for the 1978-79 tax year of 4.85 dollars per hundred dollars of assessed value rather than at the prior year's average general rate of 10.63.

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[2] *See* Cal. Rev. & Tax. Code §§ 11201-11702.
[3] *See* Cal. Rev. Tax Code §§ 101-5842.
[4] *See* Cal. Rev. & Tax Code § 11401.

In *Board of Supervisors* v. *Lonergan*, 27 Cal. 3d 855 (1980) *cert. denied*, 450 U.S. 918 (1981) the State Board's determination that all property should be taxed uniformly was challenged on the grounds that California Constitution, Art. XIII, § 12 expressly requires that property on the *unsecured* tax roll be taxed at the prior years higher rate. All property taxed by local authorities is entered on either the secured or the unsecured local tax roll. The secured tax roll contains state assessed property and all locally assessed property (both real and personal) for which the payment of taxes is secured by real property. The unsecured roll contains all other locally assessed property (both real and personal) which is subject to a local property tax levy.[5]

In accordance with California Constitution Art. XIII, § 12, property on the *unsecured* roll is taxed at a rate equal to the prior year's rate for the *secured* tax roll. Ordinarily there is little difference between the rates applicable to the two different rolls. Proposition 13, however, caused a substantial reduction in property tax rates beginning in the 1978-79 tax year. In *Board of Supervisors* v. *Lonergan*, the California Supreme Court held that both real and personal property on the *unsecured* tax roll is required by California Constitution Article XIII, § 12 to be taxed at the *prior* year's rate for the *secured* tax roll and that the resulting higher tax rate for property on the 1978-79 unsecured roll did not violate either Article XIIIA, § 1 or Article XIII, § 2.

Because private railroad cars are taxed by the State in lieu of local taxes, they are not enrolled on either the secured or unsecured local tax rolls.[6] If they were taxed locally, they would be enrolled on the *secured* tax roll.[7] Thus Article XIII,

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[5] Cal. Rev. & Tax Code § 109 provides in part:

"Roll means the entire assessment roll. The '*secured roll*' is that part of the roll containing State assessed property and property the taxes on which are a lien on real property sufficient, in the opinion of the assessor, to secure payment of the taxes. The remainder of the roll is the '*unsecured roll*'. . . ." (Emphasis added.)

[6] *See* ¶13 of Stipulation attached hereto as Appendix B.

[7] "State assessed" property is taxed on the secured tax roll. Cal. Rev. & Tax Code § 109, *supra* at note 5. Rev. & Tax Code § 108 provides: " '*State assessed property*' means all property *required to be assessed by* [*Petitioner*] under Section 19 of Article XIII of the Constitution *and which is subject to local taxation*". (Emphasis added.) Private railroad cars are assessed by Petitioner under Cal. Const. Art. XIII, § 19.

§ 12 is not applicable to private railroad cars. Nonetheless, Petitioner State Board of Equalization used the decision in *Lonergan* to levy additional 1978-79 taxes on private railroad cars at the higher rate of 10.63. This without regard to the requirement of California Constitution Article XIII, § 2 that personal property shall not be taxed at a rate higher than real property and without regard to the prohibitions of Section 306 of the 4-R Act. Respondents challenged the Board's new levy both on the grounds that it violated the California Constitution and on the grounds that it violated Section 306 of the 4-R Act.

The 4-R Act prohibits the levy and collection of a tax on rail transportation property which exceeds the tax rate generally applicable to all other commercial and industrial property in the same taxing jurisdiction. Because in California there is no tax rate set for commercial and industrial property as such, and because over 90% of all taxable property is on the secured tax roll,[8] the district court enjoined collection of the tax at a rate higher than the tax rate "generally applicable to other taxable property" in the state which the district court apparently determined is the tax rate applicable to the *secured* tax roll.

The Ninth Circuit affirmed the lower court decision with one exception. The Ninth Circuit reasoned that there were two tax rates applicable to commercial and industrial property—the average rate applied to the secured tax roll and the average rate applied to the unsecured tax roll. To determine whether the tax on rail transportation property is discriminatory, the Ninth Circuit held, the tax rate on rail transportation property should be compared with whichever tax rate is applied to the "majority" of commercial and industrial property in the state. The case was therefore remanded for a determination of whether the secured or the unsecured roll contains the majority of commercial and industrial property. Recognizing that a remand proceeding would be fruitless to their cause, Petitioners have filed a Petition for Writ of Certiorari seeking a review of the Ninth Circuit decision.

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[8] *See* ¶12 of Stipulation (Appendix B).

REASONS FOR DENYING THE PETITION

A. THE NINTH CIRCUIT DECIDED CORRECTLY THAT A TAX ON RAIL TRANSPORTATION PROPERTY LEVIED AT A RATE WHICH GROSSLY EXCEEDS THE TAX RATE LEVIED ON MOST OTHER COMMERCIAL AND INDUSTRIAL PROPERTY IN THE STATE VIOLATES SECTION 306 OF THE 4-R ACT.

Section 306 (1)(c) of the 4-R Act prohibits the levy or collection of a tax on rail transportation property "at a rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction." In the State of California there is no tax rate applicable to "commercial and industrial property" as such. Commercial and industrial property is taxed at the same general tax rate as all other property carried on the same local tax roll. Because of Proposition 13 and the decision in *Board of Supervisors* v. *Lonergan*, the 1978-79 tax rate applied to all property on the *unsecured* tax roll was more than double the tax rate applied to all property on the *secured* tax roll.

The question addressed by the Ninth Circuit was, given the two different tax rates applied to commercial and industrial property in the state, which tax rate should be used as the standard for comparison to determine whether Petitioner's tax on Respondents' rail transportation property is discriminatory under Section 306. The Ninth Circuit concluded that the words "generally applicable" should be interpreted in this case to mean the tax rate applied to the *majority* of commercial and industrial property in the state and remanded the case to the district court for a determination of which local tax roll contained the majority of commercial and industrial property. The only basis upon which Petitioner seeks a review of the Ninth Circuit's opinion on this issue is that it "conflicts" with the opinion of the Fourth Circuit in *Clinchfield Railroad Co.* v. *Lynch*, 700 F.2d 126 (4th Cir. 1983).

B. THE NINTH CIRCUIT OPINION DOES NOT CONFLICT WITH THE FOURTH CIRCUIT OPINION IN *CLINCHFIELD RAILROAD COMPANY* V. *LYNCH*.

The Petition depends entirely upon a contrived conflict between the Circuits. The issues in *Clinchfield* had nothing to do with the issues in this case other than that both opinions address issues raised under Section 306 of the 4-R Act. The similarity ends there.

1. The Ninth Circuit Decision Concerns *Tax Rate* Discrimination while the Fourth Circuit Decision Concerns *Assessment Ratio* Discrimination.

Ad valorem property taxation basically consists of two steps, the *assessment* (or purported valuation) of the property and the *levy* of a tax per dollar of assessed value (the tax rate). The *Clinchfield* opinion concerns Section 306(1)(a) which prohibits discrimination in the property tax *assessment* of rail transportation property. The Ninth Circuit opinion concerns § 306(1)(c) which prohibits the levy or collection of property taxes at a discriminatory *tax rate*.[9]

In the *Clinchfield* case the issue was whether the rail transportation property was assessed at a higher ratio of assessed value to true market value than the assessment ratio at which other commercial and industrial property was assessed. Defendant taxing authorities conceded that the plaintiff railroads had presented statistical evidence showing that commercial and industrial *real* property was assessed at a lower assessment ratio than rail transportation property was assessed. Defendants contended, however, that there was no evidence before the court concerning the assessment ratio for commercial and industrial *personal* property and that the railroads had therefore not established any discrimination as to the personal

[9] Petitioner argues that "personal and real property should be distinguished when comparing tax rates under the 4-R Act, because real property is *assessed* at a substantially lower *value* than personal property . . ." Petition at p. 10. (Emphasis added.) Petitioner confuses the *rate* at which taxes are levied with the assessment or *valuation* of the property being taxed. In California, there are different standards for the valuation of locally assessed real and personal property, but the same tax rate is applied to both real and personal property assessments on the same tax roll.

property portion of their assessment. The Court decided in favor of the railroads, nonetheless, because the defendant taxing authorities had failed to carry their burden of proof which the Court concluded shifted to the taxing authorities upon an initial showing by the railroads of discrimination in real property assessments.

The *Clinchfield* case not only concerns assessment ratio discrimination as opposed to tax rate discrimination, it also was decided on the basis of burden of proof issues which were not even raised in the Ninth Circuit case. Given the differences in the issues addressed by the Fourth Circuit in *Clinchfield* and the Ninth Circuit in this case, it takes a great leap of imagination to conjure up a conflict. In reality there is none.

2. The Ninth Circuit Decision Does Not Concern Real and Personal Property Classification Because in California the Same Tax Rate Is Applied to Both Real and Personal Property on the Same Tax Roll.

The Fourth Circuit opinion did seek to compare the assessment ratio for transportation real property and transportation personal property with the assessment ratios for commercial and industrial property of like kind. This was in response to the contention of defendants in that case that while there was discrimination in real property assessments there was no discrimination as to personal property assessments. In North Carolina personal property (like railroad transportation property) is assessed annually, while locally assessed real property is assessed only every eight years. Thus in *Clinchfield*, the differences in local commercial and industrial property assessments alleged by defendants were a function of real and personal property classification. That is, in North Carolina, property is assessed annually or only once every eight years depending solely on whether it is real or personal property. That is not the case here.

The differences in the local tax rates at issue in this case are a function of the tax roll on which property was enrolled for the 1978-79 tax year. The rate at which property was taxed in that year had nothing to do with whether the property was classified as real or personal property. There is both real and personal

property on both the secured and unsecured tax rolls. Thus the fact that Respondent's property is classified as personal property is irrelevant to the tax rate issue. The fact that one or the other local tax roll contains more or less real or personal property is equally irrelevant. The real question is which 1978-79 local tax rate was "generally applicable" to commercial and industrial property. The Ninth Circuit correctly determined that it was the tax rate applied to the local roll which contained the *majority* of commercial and industrial property in the state.

Petitioner relies on excerpts from the legislative history of Section 306 to establish that Section 306 "is not intended to interfere with the classification of property by a State *for rate purposes* into the traditional breakdown of real property [and] . . . personal property. . . ." Petition at p. 12. (Emphasis added.) This argument has no meaning where the State of California does not classify property as real and personal property *for rate purposes. All* property on the secured tax roll (both real and personal) is taxed at the *same* rate; all property on the unsecured roll (both real and personal) is taxed at the *same rate.*[10]

What the Petition amounts to is an argument that because the Fourth Circuit would compare the assessment ratio of transportation real and personal property with the assessment ratio for commercial and industrial property of like kind, the Ninth Circuit should have compared tax rates in the same fashion. It makes no sense to suggest that the Ninth Circuit, considering a tax rate case in the context of California property tax law after the adoption of Proposition 13, should have followed the approach taken by the Fourth Circuit in *Clinchfield* which considered differences in assessment ratios resulting from the assessment practices in the State of North Carolina. The courts were dealing with *different facts* and *different issues* and necessarily used *different reasoning* to reach their respective decisions.

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[10] Petitioner misleads the Court by stating that "the estimated average tax rate for all commercial and industrial *personal* property in the state" is 10.63. Petition at p. 14-15. (Emphasis in original.) The 10.63 tax rate applied only to real and personal property on the 1978-79 *unsecured* roll. Real and personal property on the 1978-79 *secured* tax roll was taxed at a rate of 4.7. See Stipulation, ¶ 9 (Appendix B).

3. The Unique Tax Law and Assessment Practices of Each State May Require Different Applications of Section 306 in Order to Achieve the Remedial Purposes of the Federal Statute. Such Different Applications Should Not Be Treated as "Conflicts" Between the Circuits.

Section 306 of the 4-R Act is intended by Congress to eliminate the longstanding burden of state tax discrimination against rail transportation property. *Trailer Trail* v. *State Board of Equalization,* ___F.2d___ (9th Cir. 1983). The property tax law and assessment and taxation practices of each state, while similar in some respects, are in many respects unique. This requires that the Courts be given flexibility in their application of Section 306 so that the remedial purposes of the statute can be obtained in the specific factual and state law context of each case.

For example, in the State of Kansas, nearly all railroad property is classified as "*personal*" property including railroad real estate. *Atchison, Topeka, and Santa Fe Railway Co.* v. *Lennen,* 531 F. Supp. 220, 232 (D. Kan. 1981). If the Tenth Circuit were to follow the Fourth Circuit in determining whether Kansas taxing authorities are discriminating against rail transportation property, the Tenth Circuit would have to compare the assessment of *all* railroad property in Kansas (both real estate and personal property) with the assessment of other commercial and industrial *personal* property only. If personal property in Kansas is assessed at a higher assessment ratio than real property, this would allow the state to assess commercial and industrial *real estate* at a substantially lower assessment ratio than that at which it assesses railroad real estate. This merely because the State of Kansas by statute has deemed railroad real estate "personal property". The very purpose of Section 306 is to avoid this kind of discrimination. In light of the vagaries and peculiarities of state tax law and practice, the federal courts must have sufficient discretion and flexibility in the application of Section 306 to prevent such discrimination.

C. THE NINTH CIRCUIT OPINION IS CONSISTENT WITH THE SUPREME COURT'S OPINION IN *WEINBERGER* V. *ROMERO-BARCELO*

The District Court granted respondents' motion for a preliminary injunction because: (1) Section 306 expressly grants jurisdiction to the federal courts "to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain or terminate any acts in violation of the [statute]," (2) because "it [was] clear that a federal statute had been violated" and (3) because Respondents had "demonstrated a likelihood of success on the merits. While the court held that it was unnecessary in such circumstances to show irreparable harm, the court further determined that Respondents would suffer irreparable harm if the injunction were not granted. The Ninth Circuit affirmed that the standard requirements for equitable relief need not be satisfied "when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief." Petitioner contends that the Ninth Circuit opinion is inconsistent with the Supreme Court's opinion in *Weinberger* v. *Romero-Barcelo*, 456 U.S. 302, (1983). These cases, however, decide two related but very *different* issues.

In *Weinberger*, the District Court denied plaintiff's motion to enjoin immediately discharges of pollutants which did not comply with the permit requirements of the Federal Water Pollution Control Act ("FWPCA"). The Court of Appeals vacated and remanded with orders to grant the injunction because, the Court concluded, the FWPCA had effectively withdrawn the District Court's equitable discretion, and the District Court had no authority to fashion any relief other than a prohibitory injunction to stop the violation of the statute. Upon review, the Supreme Court reversed the Court of Appeals holding that Congress in enacting the FWPCA, [had] not foreclosed the exercise of equitable discretion . . . " 456 U.S. at 320.

In the *Weinberger* opinion the Court considered whether the grant of jurisdiction to insure compliance with a statute through injunctive relief imposes an absolute duty to grant an

injunction when a violation is about to occur. The Court in *Weinberger* held that in such circumstances a court may in its discretion withhold injunctive relief. The opinion in *Weinberger* does not address the issue decided by the Ninth Circuit which was whether in exercising the Court's equitable discretion, the Court must in all cases make a determination whether the party seeking injunctive relief has satisfied the standard requirements for injunctive relief. Even if the Ninth Circuit is wrong on this point, Petitioners would not succeed. The District Court held that even though Respondents were not required to show irreparable harm, they had, in fact, done so. Thus under either rule Respondents were entitled to a preliminary injunction to prevent the collection of a clearly discriminatory tax which would have violated federal law.

CONCLUSION

Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari. There is no "conflict" between the Ninth and Fourth Circuit opinions, and the Ninth Circuit decision is entirely consistent with the Supreme Court's decision in *Weinberger* v. *Romero-Barcelo.*

Dated: July 30, 1983

Respectfully submitted,

HELLER, EHRMAN, WHITE &
MCAULIFFE

By _____
Weyman I. Lundquist

APPENDIX A

PROHIBITING DISCRIMINATORY TAX TREATMENT OF TRANSPORTATION PROPERTY

SEC. 306. Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), as amended by this Act, is further amended by inserting therein a new section 28, as follows:

"SEC. 28. (1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

"(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

"(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

"(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

"(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

"(2) Notwithstanding any provision of section 1341 of title 28, United States Code, or of the consitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or

citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

"(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

"(b) the provisions of this section shall not become effective until 3 years after the date of enactment of this section;

"(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

"(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

"(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any

ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

"(3) As used in this section, the term—

"(a) 'assessment' means valuation for purposes of a property tax levied by any taxing district;

"(b) 'assessment jurisdiction' means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

"(c) 'commercial and industrial property' or 'all other commercial and industrial property' means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

"(d) 'transportation property' means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this part or which is owned by the National Railroad Passenger Corporation."

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation, *Plaintiffs,* v. STATE BOARD OF EQUALIZATION, *Defendants.*	**Civil Action No. C 80 4399 SW** **Stipulation of Facts**

It is hereby stipulated and agreed, by and between the parties through their respective counsel, that, for the purpose of resolving issues presented by the pleadings in this action only, the following statements of fact are true and, all such facts are material.

1. Plaintiff Trailer Train Company ("Trailer Train") is a Delaware corporation engaged in the business of owning and operating a pool of freight train cars, subject to the jurisdiction of the Interstate Commerce Commission, for use by common carriers by railroad.

2. Plantiff Railbox Company ("Railbox)" is a Delaware corporation engaged in the business of owning and operating a pool of freight train cars, subject to the jurisdiction of the Interstate Commerce Commission, for use by common carriers by railroad.

3. On July 31, 1978, Defendant assessed all rail transportation property owned or used by Plaintiffs in their operations in the State of California as of March 1, 1978 as follows:

(a) *Property of Trailer Train Company*	
Full Cash value	$87,732,440
Assessed value	21,933,110

(b) *Property of Railbox Company*

Full cash value	$18,916,652
Assessed value	4,729,163

The above stated assessed values of Plaintiffs' property shall hereinafter be referred to collectively as the "1978-79 Assessments".

4. On or before October 1, 1978, Defendant levied a tax on the 1978-79 Assessments at the rate of 4.85 dollars per hundred dollars of assessed value. Said levy produced a tax in the amount of $1,063,755.84 on the Trailer Train assessment and a tax in the amount of $229,364.41 on the Railbox assessment.

5. By notice dated October 2, 1978, Defendant notified Plaintiffs of the amount of taxes levied on the 1978-79 Assessments and demanded payment of said taxes on or before December 10, 1978. Accordingly, Plaintiffs paid the full amount of said taxes on December 10, 1978.

6. By notice dated October 10, 1980, Defendant notified Trailer Train of taxes in the amount of $1,278,700.31 due with respect to the 1978-1979 assessment of Trailer Train property and demanded payment of said taxes on or before December 10, 1980.

7. By notice dated October 10, 1980, Defendant notified Railbox of taxes in the amount of $275,710.20 due with respect to the 1978-79 assessment of Railbox property and demanded payment of said taxes on or before December 10, 1980.

8. The additional amount of tax represents a levy on the 1978-79 Assessments at the rate of 10.68 dollars per hundred dollars of assessed value less the amount of taxes paid by Plaintiffs on December 10, 1978.

9. Taxes on all property on the 1978-79 secured tax roll were levied at an average rate of 4.70 dollars per hundred dollars of assessed value.

10. The estimated average rate of taxation of property on the 1977-78 secured tax roll is 10.63 dollars per hundred dollars of assessed value.

11. Taxes on all property on the 1978-79 unsecured tax roll were levied by 36 counties at an average rate of 4.70 dollars per hundred dollars assessed value. The average rate of

taxation of the 1978-79 unsecured roll in all 58 counties was 9.29 dollars per hundred dollars of assessed value.

12. In the 1978-79 tax year, approximately 91% of the value of all taxable property was on the secured tax roll. In the 1978-79 tax year, approximately 9% of the value of all taxable property was on the unsecured tax roll.

13. Plaintiffs' rail transportation property is assessed and taxed by the State Board of Equalization and is therefore not taxed on either the secured or the unsecured local tax roll.

Dated: January 22, 1981

TRAILER TRAIN COMPANY

By WEYMAN I. LUNDQUIST
Weyman I. Lundquist, *Attorney*

RAILBOX COMPANY

By WEYMAN I. LUNDQUIST
Weyman I. Lundquist, *Attorney*

GEORGE DEUKMEJIAN, ATTORNEY GENERAL, OF THE STATE OF CALIFORNIA

By GARY A. FARNON
Deputy Attorney General

CERTIFICATE OF SERVICE

SUPREME COURT OF THE)
)
UNITED STATES)

I, Stephen V. Bomse, certify as follows:

1. I am a member of the bar of the Supreme Court of the United States and am not a party to the action within.

2. My business address is 44 Montgomery Street, San Francisco, California 94104.

3. On July 30, 1983, I caused three true copies of the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT to be served on counsel for the petitioner in the following manner:

Under my direction, an envelope was addressed as follows:

Calvin J. Abe, Esquire
Deputy Attorney General
6000 State Building
350 McAllister Street
San Francisco, California 94102

Three copies of the aforesaid Petition were enclosed in said envelope, and said envelope was then sealed, with postage thereon fully prepaid, and deposited in the United States mail at San Francisco, California, on July 30, 1983.

I certify that the foregoing is true and correct.

Executed at San Francisco, California this 30th day of July, 1983.

s/Stephen V. Bomse
Stephen V. Bomse